V. RAMKUMAR, J.

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Crl. R.P. No. 3786 of 2007

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Dated: 07-11-2007

ORDER

The revision petitioner was the accused in C.C. 393 of 2005 on the file of the J.F.C.M. -I, Pathanamthitta for offences punishable under Sections 457, 461 and 511 of 380 I.P.C. challenges the conviction entered and the sentence passed against him concurrently by the courts below for the aforementioned offences .

2. The case of the prosecution is that at about 7 p.m. on 30-11-2003 the revision petitioner has trespassed into the house of P.W.1 and opened the almirah and drawer of a table with a view to commit theft of the valuable thereon and in the meanwhile he was caught red-handed by others. He had thereby committed the aforementioned offences.

3. On the revision petitioner pleading guilty to the charge framed against him by the J.F.C.M.-I, Pathanamthitta, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 8 witnesses as P.Ws 1 to 8 and got marked 3 documents as Exts.P1 to P3 and 2 material objects as which are broken window crosses and an axe.

4. After the close of the prosecution evidence, the accused was questioned under Sec. 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence. He examined a neighbour by name Santha as D.W.1.

4. The accused denied the incriminating circumstances appearing against him in the evidence for the prosecution. He did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate, after trial, as per judgment dated 3-2-2006 acquitted the revision petitioner of the offences punishable under Section 461 I.P.C. but convicted him under Section 457 and 380 I.P.C. and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs. 2,000/- and on default to pay the fine to suffer imprisonment for one month under Sec. 457 I.P.C. and to rigorous imprisonment for three years and to pay fine of Rs. 3,000/- and on default to pay the fine to suffer imprisonment for two months under Sec. 380 I.P.C. The sentences were directed to run consecutively.

6. On appeal preferred by the revision petitioner before the Sessions Court, Thiruvananthapuram as Crl.Appeal 146 of 2006, the learned Sessions Judge as per judgment dated 7-10-2006 confirmed the conviction and sentence but directed that the consecutive sentence

shall concurrently instead of consecutive.

V. RAMKUMAR, J.

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2. The case of the prosecution is that at about 7 p.m. on 30-11-2003 the revision petitioner trespassed into the house of P.W.1 and opened the almirah and drawer of a table with a view to commit theft of the valuable thereon and in the meanwhile he was caught red-handed by others. He had thereby committed the aforementioned offences.

3. On the revision petitioner pleading not guilty to the charge framed against him by the J.F.C.M.-I, Pathanamthitta, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 8 witnesses as P.Ws 1 to 8 and got marked 3 documents as Exts.P1 to P3 and 2 material objects which are broken window crosses and an axe.

4. After the close of the prosecution evidence, the accused was questioned under Sec. 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence. He examined a neighbour by name Santha as D.W.1.

5. The learned Magistrate, after trial as per judgment dated

1-10-2005 convicted the revision petitioner of the aforesaid offences and sentenced him to simple imprisonment for one year for each of the offences with a direction that the sentences shall run concurrently. Aggrieved by the conviction and sentence by the trial judge, the revision petitioner preferred an appeal before the Addl. District & Sessions Judge (Ad-hoc) Fast Track Court-II, Pathanamthitta as Crl. A. 322 of 2005. As per judgment dated 24-5-2007 the Addl. Sessions Court dismissed the appeal confirming the conviction entered and the sentence passed against the revision petitioner. Hence, this revision.

6. The learned counsel appearing for the revision petitioner assailed the conviction recorded against the revision petitioner on various grounds including that the investigating officer was not examined by the courts below.

7. What is unravelled by the oral and documentary evidence in the case is the following:-

P.Ws 3 and 2 are father and son who were residing in the building in question at Vazhithanam bearing door No. VI/368 of Naranganam Panchayath. They were not in the house on 30-11-2003. At about 7 p.m. on that day while P.Ws 4 and 7 who are neighbours were standing in the courtyard of P.W.4's house they heard a sound from the neighbouring house of P.Ws 2 and 3. They also noticed light in the western room of the house. After closely watching the house they had a hunch that somebody had sneaked into the house by breaking the window crosses. They came across the revision petitioner inside the house making preparations to commit theft of the valuables from the drawer of the table and the almirah. The accused was caught red-handed. P.W.1 who is a neighbour informed the matter to P.Ws 2 and 3 who returned from the temple to find people gathered in the courtyard of their house. The revision petitioner was restrained there after tying his hands and legs. MO2

axe used by the revision petitioner to break open the window crosses was recovered. MO1 series of broken window crosses were also found there. Soon thereafter P.W.2 lodged Ext.P1 F.I. statement before the police. In the absence of any motive to be suggested against P.Ws 2,3, 4 and 7, the defence contention that the courts below wrongly relied on the interested testimony of these witnesses cannot be accepted. P.Ws 4 and 7 who are the neighbours had actually seen the revision petitioner inside the house of P.Ws 2 and 3 at the wee hours of 30-11-2003 and the revision petitioner was at that time ransacking the steel almirah using a torch. His attempt to escape from the kitchen door was foiled by the local people who caught him and tied both his hands and legs and handed him over to the police. Both the courts below did not accept the defence version of D.W.1 (Santha) that the accused was actually apprehended from her house.

8. The finding of guilt has been recorded by the courts below after an evaluation of the oral and documentary evidence in the case and this court sitting in revision will be loathe to interfere with the said finding. The learned Public Prosecutor, on instruction, submitted that the revision petitioner is a habitual offender and that there are several cases pending against him. I see no reason to interfere with the conviction entered and the sentence passed against the revision petitioner.

In the result, this revision is dismissed.

V. Ramkumar, Judge.